

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY MURPHY,

Plaintiff,

v.

Case Number 10-11676
Honorable David M. Lawson
Magistrate Judge Laurie J. Michelson

SEAN LOCKHART, CFA Administrative
Assistant, THOMAS BIRKETT, SMF Warden
RAY BOWERSON, Resident Unit Manager,
MICHAEL KRAJNIK, Resident Unit Manager,
SARAH BEARSS, Assistant Resident Unit
Supervisor, KENNETH WERNER, Assistant
Resident Unit Supervisor, CHERYL BERRY,
General Office Assistant/Mailroom Clerk,
and JERI-ANN SHERRY, Regional Prison
Administrator,

Defendants.

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE MICHELSON'S
REPORT AND RECOMMENDATION, OVERRULING PLAINTIFF'S
OBJECTIONS, GRANTING MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT CHERYL BERRY, AND CONTINUING ORDER OF REFERENCE**

The matter is before the Court on the objections by the plaintiff to a report filed by Magistrate Judge Laurie J. Michelson on October 18, 2011 recommending that defendant Cheryl Berry's motion for summary judgment be granted. The part of the plaintiff's complaint directed to defendant Berry concerns her role at the Chippewa Correctional Facility in rejecting two pieces of his mail — a copy of *Esquire* magazine which features the article on his attempted escape and a copy of the religious book, *Codex Magica* — which the plaintiff alleges violated his rights to due process, free exercise of religion, free speech, and his rights under the Religious Land Use and Institutionalized Persons Act.

In an opinion and order filed in this case on September 30, 2011, the Court granted a motion for summary judgment as to the mail processing and related constitutional and statutory claims as to all the defendants who had moved for that relief. Defendant Berry, however, was not among them. The Court referred the case back to Magistrate Judge Michelson for further pretrial management, and defendant Berry then filed her motion for summary judgment. Judge Michelson recommended that the motion be granted on the grounds that the Court discussed in the September 11, 2011 opinion, and the plaintiff filed timely objections.

The Court sees no need to repeat its legal rulings contained in the previous opinion. Defendant Berry is similarly situated as the other defendants named in the mail room claim. The ruling of the Court applies to her in the same manner. The plaintiff's objections to Magistrate Judge Michelson's report in essence outline his disagreement with this Court's prior ruling on the issue. The Court, however, sees no basis to alter its ruling and adopts it in full with respect to defendant Berry.

Accordingly, it is **ORDERED** that the report and recommendation [dkt #101] is **ADOPTED**.

It is further **ORDERED** that the plaintiff's objections to the magistrate judge's report and recommendation [dkt #109] are **OVERRULED**.

It is further **ORDERED** that the defendant Cheryl Berry's motion for summary judgment [dkt. #74] is **GRANTED**.

It is further **ORDERED** that the plaintiff's complaint against defendant Cheryl Berry, only, is **DISMISSED WITH PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: August 24, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 24, 2012.

s/Deborah R. Tofil
DEBORAH R. TOFIL